



International Tribunal for the
Prosecution of Persons Responsible for
Serious Violations of International
Humanitarian Law Committed in the
Territory of The Former Yugoslavia
since 1991

Case No.: IT-04-74-T
Date: 7 March 2007
Original: ENGLISH
French

IN TRIAL CHAMBER III

Before: Judge Jean-Claude Antonetti, presiding
Judge Árpád Prandler
Judge Stefan Trechsel
Reserve Judge Antoine Kesia-Mbe Mindua

Registrar: Mr Hans Holthuis

Decision of: 7 March 2007

THE PROSECUTOR

v.

Jadranko PRLIĆ
Bruno STOJIĆ
Slobodan PRALJAK
Milivoj PETKOVIĆ
Valentin ĆORIĆ
Berislav PUŠIĆ

**DECISION ON ADMISSION OF DOCUMENTARY EVIDENCE RELATED
TO HERCEG-BOSNA / HVO STRUCTURES AND PROCESSES**

The Office of the Prosecutor:

Mr Kenneth Scott
Mr Daryl Mundis

Counsel for the Accused:

Mr Michael Karnavas and Ms Suzana Tomanović for Jadranko Prlić
Ms Senka Nožica and Mr Peter Murphy for Bruno Stojić
Mr Božidar Kovačić and Ms Nika Pinter for Slobodan Praljak
Ms Vesna Alaburić and Mr Nicholas Stewart for Milivoj Petković
Ms Dijana Tomašević-Tomić and Mr Dražen Plavec for Valentin Ćorić
Mr Fahrudin Ibrišimović and Mr Roger Sahota for Berislav Pušić

TRIAL CHAMBER III (“Chamber”) of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 (“Tribunal”);

SEIZED of the “Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna / HVO Structures and Processes”, filed by the Office of the Prosecutor (“Prosecution”) on 26 January 2007 (“Motion”), in which the Prosecution requests the Chamber to admit 28 exhibits related to the structure and processes of the Croatian Community (and Republic) of Herceg-Bosna and of the HVO (“Proposed Exhibits”),

NOTING the “Joint Defence Response of Jadranko Prlić, Slobodan Praljak and Berislav Pušić to Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna / HVO Structures and Processes”, filed by Counsel for the Accused Prlić, Praljak and Pušić on 7 February 2007 (“Joint Response”), requesting the Chamber to deny the Motion,

NOTING the “Valentin Ćorić Response to Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna / HVO Structures and Processes”, filed by Counsel for the Accused Ćorić on 9 February 2007 (“Ćorić Response”), also requesting the Chamber to deny the Motion,

CONSIDERING that the Accused Stojić¹ joined the Joint Response on 8 February and that the Accused Petković² joined both the Joint Response and the Ćorić Response on 9 February 2007,

CONSIDERING that in support of the Motion, the Prosecution submits that the Proposed Exhibits are relevant to this case because they refer to the creation of the Croatian Community (and Republic) of Herceg-Bosna, and to the operations of its government, parliament, army and criminal justice system,

CONSIDERING that the Prosecution further argues that, as a result of the time constraints imposed in this case, it was not able to tender the Proposed Exhibits

¹ Joinder of Bruno Stojić in Response to Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes, 8 February 2007.

² Joinder of Milivoj Petković in Response to Prosecution Motion for Admission of Documentary Evidence Related to Herceg-Bosna/HVO Structures and Processes, 9 February 2007.

through witnesses who have already appeared before the Chamber and that it also does not anticipate calling any future *viva voce* witnesses to present the Proposed Exhibits,³

CONSIDERING that the Prosecution also submits that the Proposed Exhibits are official publications, decrees and records similar to those presented and explained by Expert Witnesses William Tomljanovich and Robert Donia, and that they are related to such documents,⁴

CONSIDERING that in their Joint Response the Accused Prlić, Praljak, and Pušić object to the admission of the Proposed Exhibits by way of written motion without them being put to a witness in court, arguing in particular that if the Prosecution considers that the Proposed Exhibits directly relate to the critical issues of the case, the Defence should have the opportunity to refute them at this stage of the proceedings,⁵

CONSIDERING that the Accused Prlić, Praljak, and Pušić also argue that the Prosecution has failed to explain the nexus between the Proposed Exhibits and Witnesses who have already testified in this case and through whom it could have tendered these documents,⁶

CONSIDERING that the Accused Ćorić argues that the Prosecution very often gives a biased account of what the Proposed Exhibits relate to and, as a result, considers that the Defence should have the opportunity to refute the Prosecution's arguments in court through cross-examination, especially since the list of Prosecution witnesses includes persons who may be in a position to discuss the Proposed Exhibits,⁷

CONSIDERING that the Accused Ćorić further submits that by simply indicating that it does not anticipate calling witnesses to introduce the Proposed Exhibits, the Prosecution fails to explain why it does not tender the Proposed Exhibits through a witness, as required by Guideline 6 as amended by the "Decision Amending the Decision on the Admission of Evidence dated 13 July 2006" rendered on 29 November 2006 ("Guideline 6"),⁸

³ Motion, para. 5.

⁴ Motion, para. 6.

⁵ Joint Response, paras. 2 and 3.

⁶ Joint Response, para. 4.

⁷ Ćorić Response, para. 13.

⁸ Ćorić Response, para. 15.

CONSIDERING that the Accused Ćorić also submits that the conditions established by Guideline 6 have not been met because not all of the Prosecution evidence about the structures and processes of Herceg-Bosna and the HVO has been presented,⁹

CONSIDERING that the Chamber recalls its previous decisions whereby it set out the principles for the admissibility of evidence, namely the “Decision on Admission of Evidence” of 13 July 2006 and the “Decision on Admission of Documentary Evidence Relating to Prozor Municipality” of 20 February 2007,

CONSIDERING that the Chamber first notes that the Prosecution has satisfied the conditions set out in Guideline 6 (a)(i), (ii), (iii), and (vii), by providing information about the number, title, and description of the documents, their source, references to relevant paragraphs of the Amended Indictment of 16 November 2005 (“Indictment”), and their importance for this case,

CONSIDERING that under Guideline 6 (a)(iv), the Prosecution must refer to the witnesses who have already appeared before the Chamber and to the documents admitted as evidence dealing with the same paragraphs in the Indictment as the documents it intends to produce by way of written motion,

CONSIDERING that the Prosecution has satisfied this condition by referring to the documents and witnesses, including William Tomljanovich and Robert Donia, which deal with the same paragraphs of the Indictment as the Proposed Exhibits,¹⁰

CONSIDERING that, contrary to the arguments of the Accused Prlić, Praljak, and Pušić, Guideline 6 (a) (iv) does not require the Prosecution to explain the nexus between the witnesses who have already appeared before the Chamber and the exhibits it intends to introduce by way of written motion,

CONSIDERING that the Chamber considers that the Prosecution has satisfied Guideline 6 (a) (vi) insofar as time constraints may justify the presentation of a document for admission by way of written motion,

⁹ Ćorić Response, paras. 16 and 17.

¹⁰ The Chamber notes that on page 2 of the Confidential Annex to the Motion, the Prosecution makes reference to an expert witness who should not be called in support of the admission of the Proposed Exhibits since he has not appeared in this case.

CONSIDERING that in the Motion, the Prosecution has indicated that it does not anticipate calling other witnesses through whom it can introduce the Proposed Exhibits and that, consequently, the Chamber considers that the presentation of prosecution evidence relating to the Herceg-Bosna/HVO structures and processes has been concluded,

CONSIDERING that the Chamber further recalls that the Defence will have the opportunity to refute the Proposed Exhibits and the Prosecution's interpretation of them during the presentation of the Defence case,

CONSIDERING firstly that the Chamber notes that Exhibit P 00305 was already admitted on 2 October 2006,

CONSIDERING that, in view of the information provided by the Prosecution in its Motion, the Chamber considers that the other Proposed Exhibits all bear sufficient indicia of reliability, relevance, and probative value with respect to the allegations regarding the structure and political, administrative and military processes of the Croatian Community (and Republic) of Herceg-Bosna,

FOR THE FOREGOING REASONS,

PURSUANT TO Rule 89 of the Rules of Procedure and Evidence,

GRANTS the Motion,

AND ADMITS Exhibits P 00431, P 00518, P 00553, P 00559, P 00587, P 00589, P 00594, P 00646, P 00846, P 01324, P 01388, P 01559, P 01560, P 01580, P 01627, P 01716, P 02575, P 02585, P 03089, P 03092, P 03208, P 04111, P 05517, P 5799, P 05821, P 09552 and P 09553.

Done in English and in French, the French version being authoritative.

/signed/

Judge Jean-Claude Antonetti

Presiding Judge

Done this seventh day of March 2007

At The Hague

The Netherlands

[Seal of the Tribunal]